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Office of the Raja.

It appears that the Government of India issued import licenses to the firms importing oil engines, on condition that the engines were for the use of agriculturists only. The importing firm, therefore, insisted on such certificates before agreeing to sell the engines. Mr. Manibhai Z. Patel of Borsvi obtained an essentiality certificate for an oil engine of 20 to 24 Horse Power from the Agricultural Engineer, Bombay Province, Poona, on 5-4-1945 after undertaking in writing that he would use the oil engine supplied to him only for food crops. On the strength of this essentiality certificate obtained by him on 5-4-1945 he registered an order with the Firm Messrs. Greaves Cotton & Co., Bombay, who supplied him a 22 H.P. oil engine of Ruston make on 16-7-1947 for Rs. 6,977-7-6. Mr. Manibhai Z. Patel sold the engine to one Shivabhai alias Ambalal on 31-7-1947. It is alleged that Mr. Manibhai sold it for Rs. 11,601 and thereby profiteered while he states that he sold it for Rs. 7,201/- only and has produced a stamped agreement in support of it. Assuming that Mr. Manibhai sold the oil engine for Rs. 11,601/- the question that arises is whether he has committed any offence.

2 It is admitted that the orders issued by the Government of India that the oil engines should be sold on condition that they should be used for growing food crops only are not statutory, and that the demand for an essentiality certificate by the importing firm has equally no legal sanctity. There were then no control orders in force prohibiting the sale of oil

engines. Consequently Mr,Manibhai by selling the oil engine has committed no breach of any statutory order.

3 The next question for consideration is whether he can be prosecuted for cheating. Under section 415 of the Indian Penal Code, whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property to any person is said to cheat. Whether an article is or is not property does not depend upon its possessing a money or market value. If it has some special value for the person or persons concerned, it is property even though its value cannot be measured in money; and accordingly a health certificate, a certificate of having passed an examination have been held to be property. There should thus be no objection to treating the essentiality certificate as property for purposes of section 415. If it could be proved that Mr. Manibhai practised deceit from the very inception in that he had no idea whatsoever of using the engine for the purpose for which he undertook to use it but intended all the while to profiteer in it, it could be held that he deceived the Agricultural Engineer and fraudulently or dishonestly(i.e. principally with a view to cause wrongful gain to himself)induced him to deliver the property, namely, the essentiality certificate. A prosecution for the offence of cheating can thus lie against Mr, Manibhai provided the requisite proof of his deception and dishonest intention in the sense described above is forthcoming. If such proof be available, it would be feasible to prosecute him also for

the offence under section 182; for, in that case it should not be difficult to establish positive knowledge or belief that the information which he gave to the Agricultural Engineer was false.

Id./P.M.L. 5/10

Remembrancer of Legal Affairs.

U.R. to A.R.D.D.No. 544-Confl. dated 8th October 1948.

SMR 14-7-56
4 Copies.

Office of the R.L.A.

The first charge against Mr. Shah is that the applications made by Sakharam Krishna Jadhav and Gojabai Birmane which were not accepted as the applicants had not completed the preliminary stay of 3 months in the city, were used by Mr. Shah who signed the counterfoils of the applications as recipient and attempted to obtain cloth from R.C.D. No. 9 on their production on the false pretext of having forgotton the foodgrains Ration cards at home.

2 It does not appear that Mr. Shah who signed as recipient on the counterfoils of C1 form, can be prosecuted for forgery under section 465 I.P.C. Under clause 11(1)of the Bombay Cloth Rationing Order, the applicant must be a permanent resident which expression is defined in clause 2(7)of the Bombay Cloth Rationing Order. The procedure to be followed is laid down in clauses 11 to 14 of the Bombay Cloth Rationing Order. The application should be presented either by the applicant or his agent to an Authorised Retail distributor who has to certify on it that the foodgrains cards are registered with him. He should then return the application to the person presenting it. The applicant may then present the application to a Rationed Cloth Distributor who has to enter the application in his register and hand over the counterfoil to the person presenting the application. The Rationed Cloth Distributor then sends the application to the Rationing Office who files it and issues a Registration Sheet to the Rationed Cloth Distributor. On delivery of the counterfoil of the application and production of relevant foodgrains ration cards the Rationed Cloth Districutor hands over to the applicant or his agent against the recipient's signature counterfoils of the Registration sheet. On presentation of the Counterfoil of the Registration Sheet, the Rationed Cloth Distributor issues cloth. In this case without production of the foodgrains cards the A.R.D.No. 9 ought not to have certified the application. The Rationed Cloth Distributor also ought not to have accepted the application from a person who is neither the a plicant or his agent and also without foodgrain ration cards. Mr. Shah could commit all these irregularities because it seems either the A.R.D. or R.C.D. were ø in league with him or

or did not discharge their duty properly in view of the fact that Mr. Shah was a clerk from the Rationing Office. Mr. Shah can be prosecuted under clause 7 of the Bombay Cloth Rationing Order for attempting to obtain rationed cloth for use by means of a ration document which was not available for lawful use. His signature as recipient on the two counterfoils of applications at pp. 3 and 9 may be got examined by a handwriting expert before filing prosecution. There is no evidence of conspiracy and in the circumstances the A.R.D and R.C.D. cannot be prosecuted under section 120B I.P.C. It will be difficult to prove that they are abettors unless intentional aid can be proved. The R.C.D. reported the matter to the Rationing authorities and his evidence will be useful against Mr. Shah. Controller of Rationing may consider whether departmental action should be taken against the A.R.D. and the R.C D. for not following the procedure laid down in the Bombay Cloth Rationing Order strictly.

3 The next charge against Mr. Shah is that he accepted 3 C1 application forms at pp. 67, 71 and 75 on which fictitious particulars of foodgrain ration cards were quoted. On a reference to the Card Index it was found that no such cards with H prefix were issued in the suburbs. Mr. Shah says that the salesman of A.R.D. B/36 brought the forms and he accepted them without seeing the relevant foodgrain ration cards just to oblige him for a good turn he had done to Mr. Shah. The ink used for putting the prefix of the cards and the A.R.D.'s reference Nos. seems to be the same as used by Mr. Shah in signing as an Inspector on the reverse side of the form. It is not clear whether Mr. Shah who was a clerk had authority to sign as an Inspector and verify the forms. If he had then, he can be prosecuted under section 166 I.P.C. Under that section a public servant can be prosecuted for knowingly disobeying any direction of law. Such a direction may be either a direction given by a written law or a mandate proceeding from a competent authority which the public servant was bound by law to obey. Controller of Rationing should verify whether any directions or instructions were given to the clerks in this respect which Mr. Shah

was,bound in law to obey and if so, file a prosecution under section 166 I.P.C. ~~(I do not think any)~~ A prosecution under section 177 I.P.C. would not ~~kkx~~ lie. Mr. Shah, the A.R.D. and the R.C.D. concerned can also be prosecuted for breach of clause 9 for attempting to obtain ration document by furnishing false information and for aiding and abetting each other. Though the names and signatures are fictitious B/36 cannot be prosecute on the mere word of Mr. Shah. The A.R.D. and R.C.D. can be prosecuted for breach of clause 11 of the Bombay Cloth Rationing Order also.

4 The third charge against Mr. Shah is that he antedated a set of 14 C1 forms(pp. 253-279)though received after 30-11-46 as the six monthly quota was allowed to be purchased on the 9 Ration Cards registered before 30-11-46. Full quota has been purchased on all the Registration Sheets on 9-12-46 and 10-12-46. In the daily report of the C.1 forms accepted on 29-11-46, these 14 forms were added at the end of the report which shows that they were entered afterwards. In one case viz. the form at p. 277 the A.R.D. has certified the form on 5-12-46 and the form is certified by Mr. Shah on 29-11-46. In respect of these forms Mr. Shah can be said to have abetted the applicants in obtaining rationed cloth against ration documents which were not available for lawful use on 9-12-46 and 10-12-46 i.e. for breach of clauses 7 and 8 of the Bombay Cloth Rationing Order. As Mr. Shah has signed th ante-dated forms, he can be prosecuted also for the offenses of forgery ~~xxx~~ under sections 465 of the Indian Penal Code. The applicants should also be prosecuted under the said provisions of law. As there is no direct evidence against the Inspectors, departmental action if deemed fit may be taken against them.

5 Regarding the 60 C-1 forms in almost all these cases the applicants are not traceable or have left Bombay. This shows tha the forms are bogus. As the I.R.Cs. are current, the A.R.D. cannot be held liable for certifying the F. C.Rs. Nor the R.C.D. can be held liable. However departmental action should be taken against the Inspector or clerk who has signed the verification of

of the form. The thumb impression of the applicant on all these forms seems to be identical and there is every reason to suspect that this was a plot hatched by some strangers, A.R.Ds. R.C.Ds. and the clerks or Inspectors concered. However in the absence of sufficient evidence prosecution is not possible and departmental action may be taken.

Id./P.M.L. 11/10
Remembrancer of Legal Affairs.

W.O.R. to Controller of Rationing, No. G/621 dated 11th October 1948.

SMR 16-7-56
4 Copies.

Office of the R.L.A.

The question for consideration is (1) whether any action against Mr. Naranbhai Himabhai A-in is possible for failing to instal the engine in S.No. 1393/1 of Mahuda as undertaken by him when he applied for the release permit and (ii)whether the engine can be frozen, taken possession of and sold to some really needy cultivator.

Question No. (1)

It is stated in the A.& R.D.D. office note at page 3 ante that the engine arrived at the Mahuda Station on 31st January 1948 and was delivered on 17th February 1948 and later on in the month of June 1948 it was removed from Mahuda to Tundel Village and fixed on Mr.Patel's well. The Government Order, C.S.D. No. 410/D/IV dated 19th November 1947 controlled the disposal of such engines till 10th February 1948 when it was cancelled whereafter the Government Order, A.R. & D.D. No. 2088/1/f dated 16th February 1948 controlled the sale and disposal of these engines. The latter Order was also cancelled on 16th April 1948 and since then there is no control over the disposal or sale of such engines. No offence under any control order is disclosed. It would have been possible to prevent the removal at the earlier stage. That has, however, not been done.

It is, therefore, necessary to see whether the can be prosecuted under Sections 415 and 182 of the Indian Penal Code. This case is on all fours with the case of Mahibhai Z.Patel which was the subject matter of the R.L.A.'s No. 544 confl. dated 8th October 1948 and consequently that opinion will apply to this case also. The only difference is that in that case sale had already taken place whereas in this case it is very difficult to prove sale as the contention of the parties

is that the engine was fixed on the well of Mr. Patel in partnership. However, the fact is that Mr. Amin has committed a clear violation of the conditions of the agreement to make him liable for prosecution.

Question No. (2)

There is no such power in any of the Control Orders regarding freezing of the stocks of oil engine. But Government by an Order under section 4(2)(b) of the Bombay Essential Commodities and Cattle(Control)Act, can freeze the engine and prohibit disposal except under a permit.

Id./P.M.L. 24/12
Remembrancer of Legal Affairs.

U.O.R. to A. & R.D.No. G/724, dated 27-12-48

SMR 16-7-56
4 Copies.

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In his opinion No. G/724 dated the 27th December 1948, the R.L.A. had said that this case is on all fours with the case of Manibhai Z.Patel which was the subject-matter of R.L.A.'s No. 544-confl. dated 8th October 1948 and consequently that opinion will apply to this case also. In this latter opinion it was said that prosecution for the offence of cheating can lie against Mr.Manibhai provided the requisite proof of his deception and dishonest intention in the sense described above, i.e., from the very inception is forthcoming. It appears that the A.&F.D. while communicating the view to the Controller of Kaira stated in categorical terms that Mr. N.H.Amin may be prosecuted for cheating under section 415 of the Indian Penal Code as the requisite proof of his deception and dishonest intention is forthcoming.

2 However that may be, once the orders were issued by Govt. for the prosecution, it was extremely improper on the part of the Police to submit the case to the magistrate for "C" Summary upon their own view that the evidence would not support the prosecution. It was their clear duty to refer the case back through the District Magistrate to Govt. for orders pointing out that the evidence collected by them was not sufficient for the purpose of establishing dishonest intention from the inception as required by section 415. Para. 1110 of the Police Manual quoted by the D.S.P. has no relevance to the action of the Police in asking for a "C" summary. It only describes what the magistrate should do if he is not disposed to grant that summary. This is the second case which has come to the notice of the R.L.A. where after Govt had directed a prosecution the Police stifled it by asking the magistrate to grant a "C" summary. For the

other case see H.L.A.'s opinion No. 14-P-Confl. dated 16th September 1949. This is an undesirable practice and clear instructions should be issued on the point that in such cases no summary should be asked for without first consulting Government.

3 The question whether a prosecution should, notwithstanding the "C" summary, be commenced anew, would depend upon the evidence collected by the Police but which is not among the papers. In law, there would be no objection to starting a prosecution afresh provided the evidence is sufficient for the purpose. As pointed out in H.L.A.'s opinion No. 14-P-Confl. dated the 16th September 1949, a "C" summary is granted in consequence of a report made to a magistrate under section 173 of the Code of Criminal Procedure and it means that the case is neither true nor maliciously false(paragraph 134 of the Police Manual, Vol. 3). There is no legal bar to reopening a case in which a "C" summary has been granted. The only difficulty is a practical one. The prosecution will be confronted with the fact that the Police had themselves asked for a "C" summary.

I.G./P.M.L. 18/11

Remembrancer of Legal Affairs.

U.O. to A.S.F.D.No. 716-Confl. dated the 19th November 1949.

SMR 16-7-56
4 Copies.